(142)

HIGH COURT OF JUDICATURE, CHHATTISGARH AT BILASPUR

Writ Petition No. 3243 of 2003

PETITIONER: Gitika Shankar Mishra, aged about 19 years, D/o Shri Ganesh Shankar Mishra, R/o E/3, Civil Lines, Opposite Chhattisgarh Club, District-Raipur (C.G.).

-Versus-

RESPONDENTS: State of Chhattisgarh & others.

POST FOR ORDER ON 21st November, 2003

Sd/-
L.C.BHADOO
Judge

21st November 2003

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RESPONDENTS:

1. State of Chhattisgarh, Through Secretary, Department of Health, Family Welfare and Medical Education, D.K.S. Bhawan, Mantralaya, Raipur, District-Raipur (Chhattisgarh).
2. Chhattisgarh Institute of Medical Sciences, through its Dean, Bilaspur, District-Bilaspur (Chhattisgarh).
3. Guru Ghasidas University, Bilaspur through its Registrar, Koni, District- Bilaspur (Chhattisgarh).
4. Director, Medical Education, Raipur, District- Raipur (Chhattisgarh).
5. Ku. Anuniti Mathais, aged about 20 years, D/o Sri Sanjay Mathais, Resident of M.I.G. 59, Padmanavpur, District-Durg (Chhattisgarh).

Shri Vivek Tankha, Sr. Advocate with Shri Prashant Mishra, Advocate for the petitioner.

Shri Sanjay K. Agrawal, Deputy Advocate General for the respondents No. 1 and 4.

Shri Manindra Shrivastava, Advocate for the Respondents No. 2 and 3.

Miss Pritha Ghoshal, Advocate for Respondent No.5.

Before: Hon'ble Shri L.C. Bhadoo, J.

O R D E R

(Passed on 21st November, 2003)

1. By this writ petition under Articles 226/227 of the Constitution of India, the petitioner has challenged the legality, validity, propriety, and correctness of the order Annexure P/1 whereby the respondents No. 2 and 3 have rejected the petitioner's representation and have refused to grant admission to the petitioner in the 1st year's MBBS course in Chhattisgarh Institute of Medical Sciences (CIMS) for the Academic year 2003 -2004 commencing from month of February 2004

2. The facts leading to filing of this petition as mentioned in the petition are that the petitioner had appeared in the Pre-Medical entrance Test (PMT) against the Freedom Fighter Quota and she secured 8th position in that quota. The counseling for admissions began on 24th September 2003 and after counseling one payment seat from the freedom fighter category remained vacant as out of five candidates, only one candidate Ku. Priyangini Pandey got admission in the Medical College, Raipur at Srl. No.2 Ku. Suman Gupta got admission in the CIMS Bilaspur and the candidate at Srl. No.3 got admission in the dental College Raipur. The Candidate at Srl. No.4 Ravi Kamal Mahobia did not appear in the counseling as he had already got admission in Dental College Raipur. Again on 27th September 2003 a notice for the remaining vacant seats was published vide Annexure P/4 in various news papers to the effect that the second counseling for management quota seats shall be held on 28th and 29th September 2003 from 9 a.m. onwards. In this notice serial numbers and various categories were mentioned to show up to which serial number the students had already been invited for counseling and up to which serial number candidates have been exhausted. However, there was no mention

about the merit serial number or the marks secured by the last candidate of the Freedom Fighter Category who was invited for the First counseling even though in the first part it was mentioned that one seat of Freedom Fighter quota was available. It has been mentioned in the petition that the said notice published in the newspaper itself was vague, faulty and misleading and it was deliberately couched in such a manner that the candidates of Freedom Fighter Category can not become aware of the exact position. The petitioner was invited by the Medical College Raipur for Dental seat and by Rajnandgaon College even though her position was at Srl. No.8 in the overall merit list. But the CIMS did not send letter for counseling in the manner as was adopted by Raipur and Rajnandgaon Dental Medical College that on 29.09.2003 the petitioner's father appeared during the course of counseling and submitted a representation Annexure - P/5 which was recommended by the Education Minister as well as Health Secretary. The petitioner's father also submitted a representation to the Vice Chancellor and the Dean who is also the Chairman of the Selection Committee of CIMS on 30.09.2003 vide Annexure P/7. But in spite of that the Freedom Fighter Category seat was converted into the General Category seat which is in violation of the rights of the petitioner's daughter. The father of the petitioner prayed that the admission granted to the respondent No.5 after converting the seat of Freedom Fighter Category into the General category be cancelled and a representation to that effect Annexure P/8 was filed, but in spite of the issue raised by the father of the petitioner within time before the Counseling Committee even then injustice has been done to the petitioner. The father of the petitioner sent another

representation to the Vice Chancellor on 01.10.03 vide Annexure P/9 but was of no avail. In the meantime, the petitioner made rigorous and frenetic efforts before various authorities, Vice Chancellor, Dean, Health Secretary and also to the Health Minister and ultimately on 30th September 2003 the State Government acceded the petitioner's request and after considering the representation, a communication was sent to the Vice Chancellor of Guru Ghasidas University, Bilaspur vide Annexure P/10, copy of the same was sent to the Registrar of the University and Dean of the CIMS, in which it has been mentioned that without following the prescribed procedure the Freedom Fighter quota's seat has been converted into the General Category seat which could only be done on 30th September but not before. The respondents could have done this only when the Freedom Fighter quota's students were not available but in the present case the respondents hastily took action, converted the Freedom Fighter quota's seat into the General quota seat, and gave admission to the Respondent No.5 in an illegal and unjustified manner. The students who were at merit serial No. 6 and 7 namely Ashish Kamavisdar and Hemendra Kumar Verma had already submitted their representation that because of their financial position they may not seek admission in the management seat by paying the annual fees of Rs. 2.5 lacs. It has been prayed in the petition that the respondents may be directed to grant admission to the petitioner in the first year against the management quota seat of freedom fighter category and the order of the respondents converting the freedom fighter quota seat be declared illegal and void.

3. The return has been filed on behalf of the State respondent's No. 1 and 4 and they have supported the case of the petitioner.

4. The Return has also been filed on behalf of the Respondents No. 2 and 3. In the return they have submitted that in order to adhere the guidelines issued by the Medical Council of India that all the admissions are to be closed by 30th September, 2003 and as the First Counseling was over on 25th September 2003 and thereafter the Admission Committee in order to adhere the schedule fixed by the Medical Council of India i.e the admissions are to be given by 30th September 2003 only, took a decision to inform the candidates by publishing a notice in the newspaper in order to fill up the remaining vacant seats looking to the short time available with them for inviting the eligible candidates for second counseling on 28th and 29th September 2003, . In compliance of that decision of the Admission Committee the Dean issued the notice in various newspapers like Navbharat, Dainik Bhaskar, and Hari Bhoomi on 27.07.2003 inviting the students to appear for second counseling on 28th and 29th September 2003. All these news papers are widely circulated newspapers and as there was no other mode available to the Admission Committee to invite the students within such a short period, therefore this method was adopted to invite all the eligible students. Therefore, no illegality or irregularity had been committed on the part of the respondents and it has been specifically denied that the petitioner's father approached the Admission Committee during the time of counseling on 29.09.2003. On the contrary a fax was received on 29th September 2003 at 18.31 hrs. in the evening but by that time every thing was

over and since no freedom fighter candidate was available, the seat was converted into the General category and admission was given to the candidate who has been arrayed in this petition as Respondent No.5

5. I have heard counsel for the parties.

6. Learned Senior Advocate Mr. Vivek Tankha argued that the petitioner was never communicated about the counseling dates of 28th and 29th September 2003. Moreover, even by the notice given through the newspaper, in such a short notice no reasonable time was given. The notice was published in the news paper on 27th September 2003 and the counseling was held on 28th September 2003. More over, the notice was not clear, it was vague and misleading for the reason that it was not specifically mentioned in the notice that in the 1st counseling up to which serial number candidate of Freedom Fighter Category appeared for the counseling and from which number the candidates are eligible to appear in the second counseling as was mentioned for other categories. He further submitted that even the petitioner's father made frenetic effort and approach the concerned authorities for redressal of the grievance but was of no avail. He further submitted that considering the grievance of the petitioner being reasonable and justified the State Government by order Annexure P/10 exercising the powers under clause 9 of Rule 2 of the Admission Rules issued by Guru Ghasidas University for admission to the MBBS course cancelled the order of the respondent's converting the seat from Freedom Fighter category seat into the general category seat and directed the respondents No. 2 and 3 to consider the case of the eligible candidates of the Freedom Fighter quota but even that has not

been complied with by the respondents No. 2 and 3. Taking shelter of the order of the Medical Council of India that no admission could be given after 30th September 2003.

7. Learned counsel for the petitioner further submitted that 30th September 2003 is not applicable in the present case as the course would start in the month of February 2004 and as the course has not yet commenced, therefore, that guidelines do not apply in this case. The 30th September 2003 is applicable only in those cases where the courses are to commence from the month of July. The sprit behind directions of Hon'ble Supreme Court in the case of Medical Council of India Vs Madhav Singh and others is that the mid-term admission should not be granted. This is not a case of mid-term admission. In this case the course is to commence from February 2004.

8. On the other hand learned counsel for the respondents No. 2 and 3 Mr. Manindra Shrivastava supporting the contents raised in the return argued that as the first counseling was over on 25th of September, 2003 and the last date for admission was 30th September, 2003 therefore the Admission Committee and the Dean had to take a decision and to conduct the second counseling in such a way that all the admissions could be completed by 30th September, 2003, therefore, it was decided that the notice should be issued to the eligible candidates by publishing in newspapers and in response to the notice published in the newspapers large number of candidates appeared on 28th and 29th September and except the present case no other complaint was received and it was not possible for the respondents to issue notice by registered post in such a short period. Therefore, the action of the

respondents was bonafide and the same was justified as up to 29th September, 2003 no candidate of Freedom Fighter quota turned up, the committee was left with no alternative but to convert the seat into the general category and it is incorrect to say that the petitioner's father approached the admission committee during the counseling, therefore, the petition be dismissed.

9. Learned counsel for the respondent No. 5 argued that the admission has already been given to the Respondent No.5 and she has already deposited the fees of Rs. 2.5 lacs and the respondents have converted the freedom fighter quota seat after following the procedure prescribed, therefore the petition of the petitioner be dismissed.

10. Most of the facts in this case are admitted. The only question remains for consideration as to whether in the circumstances the Respondents No. 2 and 3 were justified in inviting the candidates for second counseling by publishing the notice in the news paper, and whether in the circumstances the notice published in the newspaper can be considered as sufficient notice to the petitioner and whether in the circumstances the admission can be given after 30th September, 2003 ?

11. The respondents case is very clear, as Mr. Manindra Shrivastava argued that for them the dead line was 30th September,2003 as per the guidelines issued by the Medical Council of India, the Respondents No. 2 and 3 had no authority to bypass that guideline as the first counseling was over on 25th September and the admissions were to be completed by 30th September, 2003 therefore

the respondents were not left with any other alternative remedy but to issue notice by publishing in the newspapers.

12. Clause 7 of Rule 2 of the Rules regarding admission to the M.B.B.S. course for 2003-2004 issued by Guru Ghashi Das University, Bilaspur deals with the counseling and sub-clause -1 of Clause 7 of Rule 2 says that the Director will invite the successful candidates for counseling through registered post. It is admitted position that in the present case the petitioner was not informed through registered notice as has been argued by the counsel for the respondents No. 2 and 3 since no time was left with the respondents to send a notice through the registered post, therefore, it was published in the news papers. Admittedly the notice was published in the newspaper on 27th September,2003 and the counseling was fixed on 28th and 29th September, therefore in the circumstances, this notice cannot be considered sufficient notice to the petitioner as no reasonable time was given to the petitioner. Even if the notice was to be published in the news paper at least minimum 4-5 days time ought to have given to the candidates to appear in the counseling. It is true that it is one of the mode by which a person can be communicated the notice but this mode is to be adhered to when no other mode is available that too at least 4-5 days sufficient time ought to have been given to the candidates and in the present case only one day's time was allowed that cannot be considered as sufficient notice. Even otherwise in the petitioner's case for the other reason this notice cannot be considered as sufficient notice because if we look into the notice Annexure P/4 it has been mentioned that in the general category up to 284, in the Scheduled Caste category 1211, in

Scheduled Tribe category 1484 and in the category of O.B.C. up to 355 serial number and accordingly the candidates who had secured 645, 486, 456 and 627 respectively were invited for the First Counseling and remaining candidates who are interested in admission may appear on 28.9.2003 at 9 a.m. for counseling. It will be conducted on 28.9.2003 from 9 a.m. to 2 p.m. and the seats which would not be filled up on 28.9.2003 according to the category will be converted in general category on 29.9.2003. In this notice nothing has been mentioned that up to which serial number and up to which numbers secured by the candidates of freedom fighter quota were invited for the first counseling. Therefore, in the circumstances it was not a sufficient and clear notice to the Freedom Fighter Quota candidates and no sufficient time was allowed to the candidates to appear in the second counseling.

13. Apart from that, in the present case when the father of the petitioner came to know about this fact on 29.9.2003 he started approaching the respondents. More over one another candidate namely Ashish Kamavisdar student of the same category approached the respondents No. 2 and 3 on 29.9.2003 and made an application that he be considered against the freedom fighter category seat but the respondents rejected his request vide Annexure R-2/7 on 29.9.2003. Even the State Govt. after considering the representation of the petitioner reached to the conclusion that the procedure adopted by the Respondents No. 2 and 3 in converting the freedom fighter quota seat into the general category seat is not in accordance with the procedure and ultimately cancelled the order of the respondents No. 2 and 3 regarding conversion of the seat from freedom fighter quota to the general category

and directed the respondents to invite the eligible candidates from the freedom fighter quota for admission.

14. Now coming to the question as to whether looking to the facts of the present case the admission ought to have been granted up to 30th September, 2003. In the judgment of Medical Council of India Vs. Madhu Singh and others reported in J.T. 2002(7) SC 1 the Hon'ble Court has held that the mid-session admissions were not desirable. Considering the object for fixing a time schedule of course such mid session admissions are against the very sprit of statutes governing the medical education. The Court held this relying on another judgment of Dr. Dinesh Kumar and others Vs. Motilal Nehru Medical College and others in which the Hon'ble Apex Court has held that in all medical colleges in which the scheme applies teaching for M.B.B.S. and B.D.S. course should start on the first working day of September and even those institutions which are outside the scheme might as well commence their academic sessions from September so that throughout the country there would be uniformity in that regard. In this regard if we look into the facts of the present case even though the admissions were given in the month of September 2003 but the course of college will commence from the month of February, 2004 therefore the petitioner's case cannot be termed as mid-session admission because the session is to commence from the month of February, 2004 therefore the respondents are not within their rights to deny the admission to the petitioner and also to convert the seat of freedom fighter quota in to the general category in such a hasty manner. Even in the case of Harish Verma and Others Vs. Ajay Shrivastava and another reported

in (2003)8 S.C.C. 69 in the last para Hon'ble Apex Court looking to the facts of that case held that we are conscious of the fact that there would be some delay in commencement of postgraduate studies and to some extent the 2002 and 2003 batches would overlap. However, that is a situation which cannot be avoided. It is an inevitable consequence for which the successful candidates for the year 2002 and 2003 i.e. those who will be held entitled to admission in postgraduation courses of studies consequent upon this judgment, cannot be made to suffer for no fault of theirs. Therefore, in this case also when the academic session is to commence in the month of February, 2004 therefore the respondents No. 2 and 3 were not correct to refuse or deny the compliance of the order of the Govt. Annexure P/10.

15. Therefore, in view of the above, I am of the opinion that the procedure adopted by the Respondent No. 2 for communicating the students and particularly in the case of the petitioner i.e. freedom fighter quota was not perfect and on account of non-communication she was not able to appear for counseling therefore the action of the respondents No. 2 and 3 being illegal, contrary to the principles of natural justice, consequently the decision to convert the Freedom Fighter quota seat in to General Category is illegal. Therefore the decision of Respondents No. 2 and 3 is held illegal and quashed. The respondents No. 2 and 3 are directed to comply with the Govt. order Annexure P/10 and invite all the eligible candidates from the freedom fighter quota payment seat for admission to the M.B.B.S. course 2003-04 commencing from the month of February, 2004.

16. As far as the case of Respondent No.5 is concerned, in the facts and circumstances of the case and in view of the above discussion the admission given to the Respondent No.5 cannot come into the way of the petitioner's case and in case, in compliance of this order if the admission given to the Respondent No.5 is affected then she will be entitled for refund of full fees deposited by her with the Respondents No. 2 and 3.

17. Before parting with the order I deem it appropriate to observe that this is not the first case where the faulty procedure for communicating the students to appear for counseling has been challenged. Such cases are coming up frequently before this Court. Therefore, all the Universities and the concerned authorities are expected to devise a method for communication of notice inviting eligible candidates to appear for counseling to maintain transparency in the admission process so that no grievance is raised by any candidate. For example in this connection for the first counseling the procedure which is in vogue can be continued but where the second and further counseling is required to be conducted and short time is left for communication of notice as few number of candidates are required to be communicated, therefore the authorities can adopt other methods of communication i.e. by sending telegram on their given address, through fax, telephone, T.V. or E-mail address in order to avoid complications and in order to avoid unnecessary litigation. In order to adopt this procedure at the time of inviting applications the candidates can be asked to give their telephone numbers, fax number, E-mail numbers and correct telegram address in the application form.

18. With the above observation this petition is disposed of finally.

Sd/-
L.C.BHADOO
Judge

Thakur